

**CITY OF LAVON, TEXAS
ORDINANCE NO. 2019-06-06**

Franchise Agreement

AN ORDINANCE GRANTING TO FARMERS ELECTRIC COOPERATIVE, INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC POWER FRANCHISE TO USE THE PRESENT AND FUTURE STREETS, ALLEYS, HIGHWAYS, PUBLIC UTILITY EASEMENTS, PUBLIC WAYS AND PUBLIC PROPERTY OF THE CITY OF LAVON, TEXAS, PROVIDING FOR COMPENSATION THEREFOR, PROVIDING FOR AN EFFECTIVE DATE AND A TERM OF SAID FRANCHISE AGREEMENT, PROVIDING FOR WRITTEN ACCEPTANCE OF THIS FRANCHISE, PROVIDING FOR THE REPEAL OF ALL EXISTING FRANCHISE ORDINANCES TO FARMERS ELECTRIC COOPERATIVE, ITS PREDECESSORS AND ASSIGNS, AND FINDING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC.

WHEREAS, on July 10, 1973, the City of Lavon, Texas (the “City”) granted a twenty-five (25) year franchise agreement to Farmers Electric Cooperative, Inc. (“FEC”) via the adoption of Ordinance No. 1973-7-1 (the “Franchise Agreement”); and

WHEREAS, the Franchise Agreement renewed automatically on July 10, 1998 for an additional twenty-year (20) term that expired in July 2018; and

WHEREAS, the City and FEC desire to execute a new franchise agreement setting the terms and conditions of the franchise granted to FEC; and

WHEREAS, the City is legally authorized to regulate and franchise the use of City owned rights of way; and

WHEREAS, all legal prerequisites for the passage of this Ordinance have been met, including but not limited to the requirements of the Texas Open Meetings Act; and

WHEREAS, the City Council of the City of Lavon, Texas (the “City Council”) has found that the passage of this Ordinance serves the best interests of the health, safety, and welfare of the public.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS:

SECTION 1. RECITALS:

The City Council hereby finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City Council hereby incorporates such recitals as part of this Ordinance.

SECTION 2. GRANT OF AUTHORITY:

That there is hereby granted to Farmer's Electric Cooperative, Inc., its successors and assigns (herein called "Company"), the right, privilege and franchise to erect, construct, extend, maintain, use, remove, replace, repair and operate in, along, under and across the present and future streets, alleys, highways, public utility easements, public ways and other public property (Public Rights-of-Way) of the City of Lavon, Texas (herein called "City") electric power lines, with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, transmission lines, telephone and communication lines, and other structures for its own use), (herein called "Facilities") for the purpose of selling, distributing, and transmitting electricity to the City, the inhabitants thereof, and persons, firms and corporations beyond the corporate limits thereof, for the term set out in Section 20.

SECTION 3. CONSTRUCTION, MAINTENANCE, OPERATION AND RELOCATION OF FEC FACILITIES:

Poles, towers and other structures shall be so erected as not to unreasonably interfere with traffic over streets, alleys and highways.

The City reserves the right to lay, and permit to be laid, storm, sewer, gas, water, wastewater and other pipelines, cables, and conduits, or other improvements and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under Public Rights-of-Way occupied by Company. The City also reserves the right to change in any manner any curb, sidewalk, highway, alley, public way, street, utility lines, storm sewers, drainage basins, drainage ditches, and the like. Upon request by City, Company shall relocate its facilities at the expense of the City except as otherwise required by Section 37.101(c) of the Texas Public Utility Regulatory Act (PURA), which statutory provision currently states, the governing body of a municipality may require an electric utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street. City and Company further agree that widening and straightening of a street includes the addition of any acceleration, deceleration, center or side turn lanes, and sidewalks (meaning sidewalks done in conjunction with widening or straightening of a street). All costs and expense associated with the aforementioned changes to Company facilities shall be paid for, in advance, by the City. Upon receiving (i) the reasonable and lawful request, (ii) all necessary, required, and approved final plans based on the City's engineering and/or planning requirements, (iii) not less than ninety (90) days' written notice and (iv) the advance payment from the City, the Company shall use commercially reasonable efforts to comply with the City's request, subject to the availability of materials and equipment. Company shall, except in cases of emergency conditions or work incidental in nature, obtain a permit, if required by City ordinance, prior to performing work in the Public Rights-of-Way, except in no

instance shall Company be required to pay fees or bonds related to its use of the Public Rights-of-Way, despite the City's enactment of any ordinance providing the contrary. Company shall construct its facilities in conformance with the applicable provisions of the National Electric Safety Code.

If the City requires the Company to adapt or conform its Facilities, or in any manner to alter, relocate, or change its Facilities to enable any other corporation or person to use, or use with greater convenience, said street, alley, highway, or public way, the Company shall not be bound to make such changes until such other corporation or person shall have undertaken, with good and sufficient bond, to reimburse the Company for any costs, loss, or expense which will be caused by, or arises out of such change, alteration, or relocation of Company's Facilities.

If City abandons any Public Rights-of-Way in which Company has facilities, such abandonment shall be conditioned on Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way is abandoned to reimburse Company for all removal or relocation expenses if Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-Of -Way is abandoned request the Company to remove or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Rights-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4. INDEMNITY AND INSURANCE:

A. In consideration of the granting of this franchise, Company, shall, at its sole cost and expense, indemnify and hold the City, and its past and present officers, agents and employees (the "indemnities") harmless against any and all liability arising from suits, actions or claims regarding injury or death to any person or persons, or damages to any property arising out of our occasioned by the intentional and/or negligent acts or omissions of Company construction, maintenance and operation of Company's system in the public rights-of-way, including any court cost, expenses and defenses thereof.

B. This indemnity shall only apply to the extent that the loss, damage or injury is attributable to the negligence or wrongful act or omission of the Company, its officers, agents or employees, and does not apply to the extent such loss, damage or injury is attributable to the negligence or wrongful act or omission of the City, or the City's officers, agents, or employees or any other person or entity. This provision is not intended to create a cause of action or liability for the benefit of third parties but is solely for the benefit of Company and the City.

C. In the event of joint and concurrent negligence or fault of both Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively between the City and Company in accordance with the laws of the state of Texas and without, however, waiving any governmental immunity available to the City under Texas law and without

waiving any of the defenses of the parties under Texas law. Further, in the event of joint and concurrent negligence or fault of both Company and the City, responsibility for all cost of defense shall be apportioned between the City and Company based upon the comparative fault of each.

D. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. Company shall retain defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this franchise. If Company fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Company shall be liable for all reasonable defense costs incurred by City, except as otherwise provided in section 4(b) and 4(c).

E. Company shall, at its sole cost and expense, obtain, maintain, and provide, throughout the term of this Franchise Agreement, insurance or provide Self-Insurance against all claims for injuries to person or damages to property that may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to FEC, its agents, representatives or employees in accordance with the following minimum coverage:

(a). Commercial general or excess liability on an occurrence or claims made from with minimum limits of five million dollars (\$5,000,000.00) per occurrence and ten million dollars (\$10,000,000.00) aggregate. To the extent that coverage is maintained on a claims made form, the minimum limits are ten million dollars (\$10,000,000.00) per occurrence and twenty million dollars (\$20,000,000.00) aggregate. This coverage shall include the following:

- a. Products/completed operations to be maintained for two (2) years;
- b. Personal and advertising injury;
- c. Contractual liability; and,
- d. Explosion, collapse, or underground hazards

(b). Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000.00) combined single limit. This coverage shall include all owned, hired and non-owned automobiles.

(c). Workers' compensation and employers' liability coverage. Statutory coverage limits for Coverage A and five hundred thousand dollars (\$500,000.00) Coverage B employers' liability is required.

(d). Company will provide the necessary proof of insurance within 30 days of the effective date of this Franchise Agreement. Company will not be required to furnish separate proof when applying for permits. Company will provide 30 days advance written notice to City of cancellation or material reduction of the insurance policies.

(e). Company's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under a Company plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 5. NON-EXCLUSIVE FRANCHISE:

This franchise is not exclusive, and nothing herein contained shall be construed so as to prevent the City from granting other like or similar rights, privileges and franchises to any other person, firm, or corporation. Any Franchise granted by the City to any other person, firm, or corporation shall not unreasonably interfere with this Franchise.

SECTION 6. PAYMENTS TO CITY:

In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, Company shall pay to the City annually a three per cent (3%) Gross Receipts franchise fee, as well as being subject to any and all ad valorem taxes which might be assessed by the City. For the purposes of this Section 6, "Gross Receipts" shall mean all amounts classified as electric service revenues collected by the Company from the Company's Members for the provision of Electric Utility Service received by the Company's Members at a location within the City. The term Gross Receipts shall exclude: revenue billed but not received; reimbursements for damage to the Electric Power Utility System; reimbursements for relocation cost of moving the Electric Power Utility System; contributions in aid of construction; advances in aid of construction; line extension charges in the form of one-time payments or monthly facilities charges; taxes; revenues from materials or equipment sales; principal and interest payments on amounts loaned by the Company; membership fees; deposits; revenues and receipts received from electric utilities for the use of Company transmission lines, Electric Power Utility System, and wholesale distribution sales; rental or fees paid by third parties for joint use attachments to or other use of the Electric Power Utility System; other miscellaneous non-operating revenues and receipts not directly related to the provision of Electric Power Service (i.e. interest income on Company bank accounts); or any receipts required to be remitted by the Company to third parties.

The rates to be charged by Company for residential and commercial members, or other persons, firms or corporations in said City, shall be the rates of Company in effect from time to time charged to its other members. The service furnished hereunder to the members and the inhabitants of said City within the area above set out shall be first class in all respects considering all circumstances, and shall be subject to such reasonable rules and regulations as City may make from time to time. Company may require reasonable security for the payment of its bills and may require such inhabitants or other persons, firms, or corporations to become members of said Company and be bound by its charter, as the case may be, and by-laws.

SECTION 7. BOOKS AND RECORDS:

A. City may, if it sees fit, upon reasonable notice to Company have the books and records of Company examined by a representative of said City to ascertain the correctness of the reports agreed to be filed herein. Company shall make available, during normal working hours and upon reasonable notice, such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. Company shall assist City in its review by providing all requested information no later than fifteen (15) business days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that Company has underpaid the franchise fee by 10 percent or more, in which case the reasonable costs of the audit shall be reimbursed to the City by Company. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City. Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Farmers Electric Cooperative, Inc.

B. If Farmers Electric Cooperative, Inc. provides confidential or proprietary information to the City, Company shall be solely responsible for identifying such information with markings calculated to bring the City's attention to the proprietary or confidential nature of the information. City agrees to maintain the confidentiality of any non-public information obtained from Company so designated to the extent allowed by law. City shall not be liable to Company for the release of any information City is required to release by law. If City receives a request under the Texas Public Information Act that includes Company's document(s) of a proprietary or confidential nature, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). City also will provide Company with a copy of this request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows City to withhold the information.

SECTION 8. ACCEPTANCE OF FRANCHISE:

A. In order to accept this franchise, Company must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Company, the franchise ordinance shall be rendered null and void.

B. When this franchise ordinance becomes effective, all previous ordinances of City granting franchises held by Company shall be automatically canceled and annulled, and shall be of no further force and effect.

SECTION 9. TERMINATION:

A. Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that Company violates any material provision of the Franchise.

B. Procedures for Termination.

- (1) City may, at any time, terminate this Franchise for a continuing material violation by Company of any of the substantial terms hereof. In such event, City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Company at the address set

forth in Section 14 hereof. Company shall have one hundred twenty (120) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that if Company commences work or other efforts to cure such violations within sixty (60) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

- (2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least fifteen business (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days' notice by publication shall be given of the date, time and place of any public hearing to interested members of the public.
- (3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.
- (4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.
- (5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 10. NO THIRD-PARTY BENEFICIARIES:

This Franchise is made for the exclusive benefit of the City and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 11. SUCCESSORS AND ASSIGNS:

A. The rights granted by this franchise inure to the benefit of the Company. The Company may, without consent by City, transfer or assign the rights granted by this franchise to a parent, subsidiary or affiliate, provided that such parent, subsidiary or affiliate assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder, and has net capital and liquid assets reasonably equivalent to Company's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the transferee's or assignee's financial ability to perform this franchise reasonably acceptable to the City. Company shall give City written notice thirty (30) days prior to such assignment.

B. City will have the right to approve the transfer or assignment of the franchise, except as provided in Section 11.A. above. City shall grant approval unless the Assignee is materially weaker than Company. For the purpose of this section, "materially weaker" means that the long-term unsecured debt rating of the Assignee is less than investment grade as rated by both S&P and Moody's. If the Assignee is materially weaker, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. The City will grant approval to a materially weaker proposed Assignee or Transferee unless withheld for good cause such as: (1) the failure of the proposed

Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. City agrees that said approval shall not be unreasonably delayed. Any such assignment or transfer shall require that said Assignee assume all obligations of Company and be bound to the same extent as Company hereunder. If within the first ninety (90) days after assignment to Assignee, City identifies a failure to comply with a material provision of this franchise, City shall have the right, after notice and opportunity for hearing before Council, to terminate this franchise.

SECTION 12. COMPLIANCE WITH LAWS AND ORDINANCES:

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas and all other generally applicable ordinances of the City, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way, as amended.

SECTION 13. NO WAIVER:

Either City or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 14. NOTICES:

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (1) delivered in person to the address set forth below; (2) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (3) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

To City of Lavon
Attn: City Administrator
PO Box 340
120 School Road
Lavon, Texas 75166

With a copy to:
Messer, Fort, & McDonald, P.L.L.C.
Attn: Andy Messer
6371 Preston Rd., Ste. 200
Frisco, Texas 75034

To Farmers Electric Cooperative, Inc.:
Attn: Mark Stubbs
2000 E. Interstate 30
Greenville, Texas 75403

SECTION 15. RENEGOTIATION:

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 16. PREVIOUS ORDINANCES:

When this Franchise becomes effective, all franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by the City, are hereby repealed.

SECTION 17. SEVERABILITY:

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Lavon hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 18. PARAGRAPH HEADINGS. CONSTRUCTION:

The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 19. OPEN MEETING:

That it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required by law, and that public notice of the time, place, and purpose of said meeting was given all as required by Section 551.041, Texas Government Code.

SECTION 20. EFFECTIVE DATE; TERM:

If Company accepts this ordinance, it becomes effective as of June 4, 2019. This Ordinance shall become effective upon Company's written acceptance hereof, said written acceptance to be filed by Company with the City within sixty (60) days after final passage and approval hereof. The right, privilege and franchise granted hereby shall expire on July 10, 2044; and shall be subject to a renewal option for a period of twenty (20) years provided that, unless written notice is given by either party hereto to the other not less than sixty (60) days before the expiration of this franchise agreement, it shall be automatically renewed thereafter for

like periods until canceled by written notice given not less than sixty (60) days before the expiration of any such renewal period.

PASSED AND APPROVED by the City Council of the City of Lavon, Texas this 4th day of June 2019.

Vicki Sanson, Mayor

ATTEST:

Kim Dobbs
City Administrator/ City Secretary

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

WHEREAS, there was finally passed and approved on _____ Ordinance No. _____ granting Farmer’s Electric Cooperative, Inc., its successors and assigns, a franchise to furnish and deliver electricity to the general public in the City of Lavon, Collin County, Texas, for the transporting, delivery and distribution of electricity in, out of and through said municipality for all purposes, which is recorded in the Minutes of the City Council of said City; and

WHEREAS, Section 8 of said ordinance provides as follows:

In order to accept this franchise, Farmers Electric Cooperative, Inc. must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Farmers Electric Cooperative, Inc., the franchise ordinance shall be rendered null and void.

WHEREAS, it is the desire of Farmer’s Electric Cooperative, Inc., the holder of the rights, privileges and grants under the aforesaid franchise ordinance, to comply with the above-quoted provisions of Section 8 thereof.

NOW, THEREFORE, premises considered, Farmer’s Electric Cooperative, Inc., acting by and through its duly authorized officers, and within the time prescribed by Section 8 quoted above, does hereby agree to and accept the franchise granted to it by the above-described ordinance, in accordance with its terms, provisions, conditions and requirements and subject to the stipulations and agreements therein contained.

WITNESS THE EXECUTION HEREOF, on this the ____ day of _____, 201__.

Farmer’s Electric Cooperative, Inc.
By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

I, Kim Dobbs, City Administrator | City Secretary of the City of Lavon, Texas, do hereby certify that the attached Acceptance executed by Farmer’s Electric Cooperative, Inc. is a true and correct copy of a formal acceptance of a franchise ordinance finally passed and approved by said City on _____ and of record in the Minutes of the City;

OF WHICH, witness my official signature and the seal of said City on this the ____ day of _____, 2019.

Kim Dobbs, City Administrator | City Secretary